SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 271

IN THE MATTER OF 620 CHURCH STREET BUILDING CORPORATION ET AL., PETITIONERS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 19, 1936.

—8306-C

At a regular term of the United States Court of Appeals for the Seventh Circuit begun and held in the United States Court Room in the city of Chicago in said Seventh Circuit on the first day of October, 1935, of the October Term in the year of our Lord one thousand nine hundred and thirty-five and of our Independence the one hundred and forty-fifth.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.
620 Church Street Building Corporation, Irene Goodman, G. Walter, M. Long, A. W. Kibby, Emil Rosenthal and B. K. Goodman,
Petitioners.

Petition for leave to appeal from an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

And on, to wit: On the twenty-fifth day of April, 1936, there was filed in the office of the Clerk of this Court a Notice and Proof of Service, which said Notice and Proof of Service is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

5869.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

Petition for appeal from order of confirmation entered in proceedings for corporate reorganization under Section 77B of the Bankruptcy Act, as amended, in Case No. 56,564, in the District Court of the United States, Northern District of Illinois, Eastern Division.

Honorable
John P. Barnes,
Judge Presiding.

NOTICE.

To Defrees, Buckingham, Jones & Hoffman, 38 S. Dearborn Street,

George W. Swain, 134 S. LaSalle Street, Chicago.

Gotthard A. Dahlberg, 11 S. LaSalle Street, Chicago.

Pam & Hurd, 231 South LaSalle Street, Chicago.

Wilhartz, Hirsch & Schanfarber, 38 S. Dearborn St., Chicago.

Sonnenschein, Berkson, Lautmann, Levinson & Morse, 77 West Washington Street, Chicago, Illinois.

You Are Hereby Notified that on Saturday, April 25, 1936, we shall file with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, the petition of 620 Church Street Building Corporation, Irene K. Goodman, G. Walter, M. Long, A. W. Kibby, Emil Rosenthal and B. K. Goodman, for leave to appeal from that certain order of confirmation of the District Court of the United States, for the Northern District of Illinois, Eastern Division, entered on March 31, A. D. 1936, in the proceedings therein pending entitled "In the matter of 620 Church Street Building Corporation, a corporation, Debtor", Case No. 56564, and we shall also file

therewith the joint assignment of errors of petitioners and brief in support of petition for leave to appeal.

ISAAC M. MILLS,
THEODORE E. REIN,
MORTON C. CHESLER,
IRVING L. BLOCK,
Chicago, Illinois,
Counsel for Petitioners.

Received a copy of the above and foregoing notice, and copy of the petition, assignment of errors and brief therein mentioned, this 25th day of April, A. D. 1936.

SCOTT, MACLEISH & FALK,
GEO. W. SWAIN,
PAM & HURD,
WILHARTZ, HIRSCH & SCHANFARBER,
DEFREES, BUCKINGHAM, JONES & HOFFMAN,
GOTTHARD A. DAHLBERG, H. D.
SONNENSCHEIN, BERKSON, LAUTMANN, LEVINSON & MORSE.

Endorsed: Filed Apr. 25, 1936, Frederick G. Campbell, Clerk.

And on the same day, to wit: On the twenty-fifth day of April, 1936, there was filed in the office of the Clerk of this Court a Petition for Leave to Appeal, which said Petition for Leave to Appeal is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5869.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

Petition for appeal from order of confirmation entered in proceedings for corporate reorganization under Section 77B of the Bankruptcy Act, as amended, in Case No. 56,564, in the District Court of the United States, Northern District of Illinois, Eastern Division.

Honorable
John P. Barnes,
Judge Presiding.

PETITION FOR LEAVE TO APPEAL.

To the Honorable Judges of the United States Circuit Court of Appeals, for the Seventh Circuit:

Your petitioners, 620 Church Street Building Corporation, Irene Goodman, G. Walter, M. Long, A. W. Kibby, Emil Rosenthal and B. K. Goodman, respectively pray for leave to appeal from the order of confirmation of the United States District Court for the Northern District of Illinois, Eastern Division thereof, made by the Honorable John P. Barnes, one of the Judges thereof, on the 31st day of March, 1936, depriving these petitioners of their property without due process of law and in violation of the Constitution of the United States of America.

Respective Interests of Petitioners.

Your petitioner, 620 Church Street Building Corporation, respectfully represents that it is the debtor herein and is the owner of all of the assets described in its petition and herein sought to be affected.

Your petitioners, Irene Goodman, G. Walter, M. Long and A. W. Kibby, respectfully represent that they are the legal owners and holders of all of the issued and outstanding capi-

tal stock of the said 620 Church Street Building Corporation, debtor, holding, respectively, twelve hundred sixty-seven (1267), one (1), one (1) and one (1) shares of said capital stock, and more particularly described in the verified proofs of claim heretofore filed and allowed in the court below.

Your petitioner, Emil Rosenthal, respectfully represents that he is the legal owner and holder of all of the outstanding and unpaid principal second mortgage notes in the principal amount of $40,250.00 with interest thereon since December 13, 1929, which notes are secured by trust deed dated July 13, 1928, from the Carlson Annex Building Corporation to B. K. Goodman, as trustee, conveying the real estate involved in the court below and more particularly described in the verified proof of claim heretofore filed and allowed in the court below.

Your petitioner, B. K. Goodman, respectfully represents that he is the legal owner and holder of the sole outstanding and unpaid principal third mortgage note in the sum of $27,000.00 with interest thereon since December 3, 1931, which note is secured by trust deed dated June 3, 1931, made by the 620 Church Street Building Corporation to W. Kahn, as trustee, conveying the real estate involved in the court below and more particularly described in the verified proof of claim heretofore filed and allowed in the court below.

Summary of the Facts.

Your petitioners respectfully represent that the following is a summary statement of the facts upon which the order of confirmation complained of has been entered, creating important and fundamental questions involving the substantive property rights of petitioners under Section 77B of the Bankruptcy Act, as amended, to-wit:

1. That your petitioner, 620 Church Street Building Corporation (herein in the proceedings below referred to as "Debtor"), is at the present time, and has been since the date of its incorporation, engaged in the business of acquiring and owning one building, and the site therefor, consisting of the premises commonly known as 620 Church Street, Evanston, Illinois. The principal asset of the debtor consists of the real estate described as follows:

> Leasehold estates for a term ending August 31, 2021, in Sub-lots 1 and 2 of Lots 2 and 3 in Block 19 original

Village (now City) of Evanston, Illinois, excepting the South 15 feet of said Sub-lots 1 and 2, dedicated for use as public alley and together with the vacated alley lying West of and adjacent to said Sub-lot 2, said leaseholds having been created by Indentures of Lease between Northwestern University and Victor C. Carlson and Charlotte Carlson, one dated July 27, 1922, and the other dated April 20, 1928, as amended by an Agreement between Lessor and Lessees dated June 20, 1928.

2. That the improvements upon said leasehold estate consist of a part seven-story and part two-story and basement store, merchandise and office building of fire proof construction.

3. That the present capitalization of the said debtor is as follows:

(a) First Mortgage Six Per Cent Building and Leasehold Serial Gold Bonds (Carlson Annex Bonds) issued by Carlson Annex Building Corporation, predecessor of 620 Corporation, and secured by a trust deed dated June 30, 1928, to The Bank of America and Edgar N. Greenbaum, as trustees, and recorded in the Office of the Recorder of Deeds of Cook County, Illinois, as Document No. 10085077.

Principal amount outstanding.....$445,500
with appurtenant interest coupons maturing July 1, 1931, and thereafter.

NOTE: Proceedings were heretofore commenced in the Circuit Court of Cook County, Illinois, to foreclose the lien of trust deed securing the Carlson Annex Bonds in a cause entitled *Louis M. Quitman, etc. as Successor Trustee* v. *Carlson Annex Building Corporation, et al.,* in the Circuit Court of Cook County, Illinois, No. B-223577.

(b) Notes (herein sometimes called "Second Mortgage Notes") secured by a trust deed dated July 13, 1928, from Carlson Annex Building Corporation to B. K. Goodman, as Trustee, recorded on July 25, 1928, in the Recorder's Office of Cook County, Illinois, as Document No. 10099385.

Principal amount outstanding..... $40,250
together with interest thereon since December 13, 1929.

(c) Note (herein sometimes called "Third Mortgage Note") secured by a trust deed dated June 3, 1931,

from 620 Corporation to W. Kahn, as Trustee, recorded on June 5, 1931, in the Recorder's Office of Cook County, Illinois, as Document No. 10915337.

Principal amount outstanding..... $27,000
together with interest thereon since December 3, 1931.

(d) Common stock of no par value..... 1260 shares.

4. That claims upon all of the above obligations have been filed and allowed in the proceedings below; that all of said obligations described in subdivisions (b), (c) and (d) of the preceding paragraph of this petition, are owned and held entirely by your petitioners herein.

5. That on July 12, 1934, the debtor (one of your petitioners herein) filed its voluntary petition for reorganization under Section 77B of the Bankruptcy Act as amended, in the District Court of the United States for the Northern District of Illinois, Eastern Division thereof, in proceedings bearing No. 56,564; that subsequently, on the 5th day of November, 1934, Warner G. Baird was appointed permanent trustee of the debtor's property; that said Warner G. Baird is now the duly qualified and acting trustee of the debtor's property in the proceedings herein.

6. That Chester R. Davis, Murray Wolbach and James B. McCahey, acting as a committee for the First Mortgage Six Percent Building and Leasehold Serial Gold Bonds issued by the Carlson Annex Building corporation (referred to in these proceedings as the "Protective Committee") intervened in the proceedings below for and on behalf of the bondholders who deposited bonds with said committee.

7. That from the time of the institution of the proceedings below, your petitioners conferred and negotiated with the said protective committee for the purpose of creating and consenting to a fair and feasible plan of reorganization of the debtor's assets and liabilities.

8. That notwithstanding your petitioners' desire to cooperate to the end that such a plan of reorganization be consummated, the said protective committee, on or about the 30th day of January, 1936, pursuant to leave of court, filed their plan of reorganization (herein referred to as "Plan") purporting to effect a reorganization of the debtor's property.

9. That said plan provides, in brief, that the property of the debtor be reorganized together with the adjacent building known as the 636 Church Street Building Corporation (by whom a petition was likewise filed for reorganization

under Section 77B of the Bankruptcy Act, in the District Court below, in a case therein pending bearing No. 56187), through the medium of a new corporation which, under the said plan, is to acquire all of the assets of both building corporations; that the said plan provides that a certain pro rata portion of the securities of the new corporation are to be distributed to the holders of the indebtedness against the 636 Church Street Building Corporation and to the holders of the bonds secured by the present first mortgage on the 620 Church Street Building Corporation, debtor herein, thus failing to make provision for payment of any kind whatsoever to the holders of the second mortgage in the sum of $40,250.00, and to the holders of the third mortgage in the sum of $27,000.00 presently existing on the property of the debtor, 620 Church Street Building Corporation (being the entire Class 3 and entire Class 4 of claims against the debtor's property); that said plan does not provide for any consideration or distribution to the holders of the capital stock of the 620 Church Street Building Corporation, debtor (being the entire Class 5 of claims against the debtor's property).

10. That pursuant to leave granted by the District Court below, your petitioners filed objections to said plan which, in substance, were based upon the fact that the said plan did not provide adequate protection for the realization by the holders of the second mortgage notes and the holder of the third mortgage note and of the holders of the capital stock of the debtor of the value of their liens and claims against the debtor's property, and that said plan was unfair and inequitable and contrary to the Constitution of the United States of America, in that said plan was repugnant to the Fifth Amendment of the Constitution.

11. That pursuant to the suggestion and request of the District Court below, various appraisals of the debtor's property were submitted to said court, which appraisals varied from the sum of $205,000.00 to $600,000.00.

12. That the said protective committee, acting under the said deposit agreement on behalf of the holders of $371,300 principal amount of said first mortgage bonds, being an amount in excess of sixty-six and two-thirds in amount of the aggregate amount of allowed claims of Class 2 (being that class concerning claims based upon said first mortgage bonds), consented to and accepted the said plan so filed by said committee.

13. That no acceptance by any claimant in either Class 3

(being that class concerning claims based upon the said second mortgage notes) or Class 4 (being that class concerning claims based upon the said third mortgage note) or Class 5 (being that class concerning claims based upon the capital stock of the debtor) was filed with respect to said plan which was confirmed by the order of the District Court below, and of which your petitioners now make complaint.

14. That subsequently, on the 31st day of March, 1936, the District Court below entered an order of confirmation (from which this appeal is sought, a copy of which order is attached to this petition as Exhibit "A"), finding, among other things, that the leasehold estate of the debtor has a fair market value of $245,025.00 and that there is no equity in said estate over and above the $445,500.00 of principal amount of first mortgage bonds and that the debtor is accordingly insolvent, and that the consent of a majority of the stockholders of the debtor is not a prerequisite to the confirmation of the plan; that said order, in paragraph 12 thereof, purported to appraise all claims filed in Class 3 (the second mortgage notes) and all claims filed in Class 4 (the third mortgage note) to be of no value, and that therefore the consent of sixty-six and two-thirds in amount of claims allowed in said Class 3 and the consent of sixty-six and two-thirds in amount of claims in said Class 4 were not a prerequisite to the confirmation of the said plan.

15. That your petitioners refer to the Assignment of Errors filed by them simultaneously with this petition, setting forth the errors made by the District Court below, and giving the grounds for this appeal, and hereby make said Assignment of Errors a part hereof.

Wherefore, your petitioners pray that they may be allowed, in the discretion of this Honorable Court, to appeal in matter of law herein, and that the prayer of said petition be granted and a citation be issued directed to Warner G. Baird, trustee of debtor, Chester R. Davis, Murray Wolbach and James B. McCahey, acting as a committee for the holders of First Mortgage Six Percent Building and Leasehold Serial Gold Bonds issued by Carlson Annex Building Corporation, under the terms of a deposit agreement dated December 12, 1929 (referred to in these proceedings as the "Committee"), Louis M. Quitman and Edgar N. Greenebaum, as trustees under trust deed dated June 30, 1928, made by Carlson Annex Building Corporation, William L. O'Connell, as receiver of the Central Republic Trust Company, and of Central Repub-

lic Trust Company as Trustee by succession through consolidation, Clara Abt, Lucille Abt, Edward Schoen and Alice G. Hirsh, commanding them to appear before the said United States Circuit Court of Appeals, for the Seventh Circuit, to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record and proceedings in said proceeding, duly authenticated, may be transmitted to the United States Circuit Court of Appeals for the Seventh Circuit.

And your petitioners will ever pray.

620 CHURCH STREET BUILDING CORPORATION,
By G. WALTER,
Its Vice President.

IRENE GOODMAN,
G. WALTER,
M. LONG and
A. W. KIBBY,
By G. WALTER,
Their duly authorized agent.

B. K. GOODMAN,
EMIL ROSENTHAL.

State of Illinois } ss.
County of Cook }

G. WALTER, being first duly sworn, on oath deposes and says that she is the Vice President of the 620 Church Street Building Corporation, petitioner herein; that she has read the foregoing petition by her subscribed, knows the contents thereof and that the same is true in substance and in fact.

G. WALTER.

Subscribed and Sworn to before me this 24 day of April, 1936.

MORTON CHESTER,
Notary Public.

(Notarial Seal)

State of Illinois } ss.
County of Cook }

G. WALTER, being first duly sworn, on oath deposes and says that she is one of the petitioners herein and is the duly authorized agent of G. Walter, M. Long, and A. W. Kibby,

petitioners; that she has read the foregoing petition by her subscribed, knows the contents thereof and that the same is true in substance and in fact.

G. WALTER.

Subscribed and Sworn to before me this 24th day of April, 1936.

(Notarial Seal)

MORTON CHESTER,
Notary Public.

State of Illinois } ss.
County of Cook }

EMIL ROSENTHAL, being first duly sworn, on oath deposes and says that he is one of the petitioners herein; that he has read the foregoing petition by him subscribed, knows the contents thereof and that the same is true in substance and in fact.

EMIL ROSENTHAL.

Subscribed and Sworn to before me this 24 day of April, 1936.

(Notarial Seal)

MORTON CHESTER,
Notary Public.

State of Illinois } ss.
County of Cook }

B. K. GOODMAN, being first duly sworn, on oath deposes and says that he is one of the petitioners herein; that he has read the foregoing petition by him subscribed, knows the contents thereof and that the same is true in substance and in fact.

B. K. GOODMAN.

Subscribed and Sworn to before me this 24 day of April, 1936.

(Notarial Seal)

MORTON CHESTER,
Notary Public.

IN THE DISTRICT COURT OF THE UNITED STATES

For the Northern District of Illinois,

Eastern Division.

In the Matter of
620 Church Street Building Corporation,
a corporation,
Debtor. } No. 56564.

ORDER OF CONFIRMATION.

This cause coming on for hearing pursuant to order entered herein on the 30th day of January, 1936, for the proposal, consideration, and confirmation of the Plan of Reorganization dated as of January 30, 1936 (hereinafter sometimes referred to as the "Plan"), filed in this proceeding on January 30, 1936, by Chester R. Davis, Murray Wolbach, and Charles B. McCahey, acting as a Committee for the holders of First Mortgage Six Per Cent Building and Leasehold Serial Gold Bonds (hereinafter sometimes called "Carlson Annex Bonds"), issued by Carlson Annex Building Corporation and secured by trust deed dated June 30, 1928, to The Bank of America and Edgar N. Greenebaum, as Trustees, under the terms of a Deposit Agreement dated December 12, 1929, as amended (hereinafter sometimes referred to as the "Committee"), and upon other matters set forth in said order of January 30, 1936, and for the determination of such other matters as may be properly before the Court, and the Court having examined the Plan and having heard the statements and arguments of counsel, and having considered the objections filed to the Plan, and being fully advised in the premises, Finds, Orders, Adjudges and Decrees:

1. That the petition for reorganization heretofore filed herein has been approved as properly filed and filed in good faith, and that the Court has jurisdiction in this proceeding of said Debtor and of all its creditors and stockholders and all of the parties in interest in the reorganization of said Debtor and has jurisdiction of the property of the Debtor and of the subject matter of this cause.

2. Notice of the hearing on the Plan of Reorganization and the objections thereto and of the other matters set forth

in the order of this Court entered herein on January 30, 1936, has been duly given to the creditors and stockholders of the Debtor and claimants against its property and assets and to all other parties in interest as is required by said order and notice of the submission of this order has been given to all counsel of record.

3. That for the purposes of any plan of reorganization proposed in this proceeding and its acceptance, the Court divided the creditors and stockholders of Debtor into six classes according to the nature of their respective claims and interests, namely:

Class 1: Those claims allowed in these proceedings against 620 Church Street Building Corporation, or its property, entitled to priority under Section 77B of the Bankruptcy Act as amended.

Class 2: Those claims allowed in these proceedings against 620 Church Street Building Corporation, or its property, with respect to the First Mortgage Six Per Cent Building and Leasehold Serial Gold Bonds issued by Carlson Annex Building Corporation under trust deed dated June 30, 1928, from Carlson Annex Building Corporation to The Bank of America and Edgar N. Greenebaum, as trustees.

Class 3: Those claims allowed in these proceedings against 620 Church Street Building Corporation, or its property, with respect to the Notes secured by trust deed dated July 13, 1928, from Carlson Annex Building Corporation to B. K. Goodman, as trustee.

Class 4: Those claims allowed in these proceedings against 620 Church Street Building Corporation, or its property, with respect to the note secured by trust deed dated June 3, 1931, from 620 Church Street Building Corporation to W. Kahn, as trustee.

Class 5: Those interests of stockholders allowed in these proceedings in 620 Church Street Building Corporation with respect to the shares of capital stock of 620 Church Street Building Corporation.

Class 6: Those claims and interests allowed in these proceedings against and in 620 Church Street Building Corporation, or its property, represented by claims or interests of whatever character other than as above in the foregoing classes 1 to 5, inclusive, enumerated against 620 Church Street Building Corporation, or its property, whether or not the same be evidenced by written instrument.

4. That the time of filing or the manner of proving or

evidencing claims in Class 1 has not yet been fixed, provision being made hereinafter in this order for such filing and approving or evidencing, to the extent necessary or advisable, unless hereafter otherwise determined advisable by the Court. The Plan provides that all costs of administration and other allowances made and approved by the Court in the proceedings for the reorganization of the Debtor are to be paid in cash in full by the Debtor, and, therefore, such claims are not affected by the Plan, and the acceptance of the Plan by the holders of such claims is not a prerequisite to the confirmation of the Plan.

5. That the Committee acting under the Deposit Agreement dated December 12, 1929, referred to above, is lawfully constituted, and that the said Committee has full power, right and authority to consent to and accept the Plan for and on behalf of each of the holders of Carlson Annex Bonds deposited with said Committee under said Deposit Agreement; that the Committee has accepted the Plan in writing on behalf of the holders of all Carlson Annex Bonds on deposit with it under said Deposit Agreement, to-wit: on behalf of the holders of $371,300 principal amount of said Bonds with interest thereon, which amount is in excess of 66 2/3% of the aggregate amount of allowed claims of Class 2, and such consent and acceptance so filed by the Committee is hereby declared to constitute the consent and acceptance of the Plan by the holders of the Certificates of Deposit issued under said Deposit Agreement in respect of said Carlson Annex Bonds on deposit with the Committee thereunder.

6. That for the reasons hereinafter set forth, the acceptance of the Plan by the holders of allowed claims in Class 3 is not a prerequisite for the confirmation of the Plan.

7. That for the reasons hereinafter set forth, the acceptance of the Plan by the holder of the allowed claim in Class 4 is not a prerequisite for the confirmation of the Plan.

8. That for the reasons hereinafter set forth, the acceptance of the Plan by the stockholders of the Debtor is not a prerequisite for the confirmation of the Plan.

9. That no claim has been filed in Class 6.

10. That a reasonable time has been determined and fixed within which the claims and interests of creditors and stockholders might be filed or evidenced, and said time having expired no claim or interest not heretofore filed or evidenced herein and allowed may participate in the Plan except on order for cause shown.

11. That the Court having heard evidence and testimony on the value of the property of the Debtor finds: that the principal property of the Debtor consists of the two leasehold estates and improvements on the property located at 620 to 628 Church Street, in the City of Evanston, County of Cook, and State of Illinois, said two leasehold estates, together with all improvements thereon and appurtenances thereto, being more specifically described in the Plan and being hereinafter sometimes referred to as the "Carlson Building Annex"; that the Carlson Building Annex has a fair market value of $245,025, and that there is no equity over and above the $445,500 principal amount of Carlson Annex Bonds outstanding against the Carlson Building Annex; that the Debtor is accordingly insolvent; that the stockholders are not entitled to participate in the Plan, and that their acceptance of the Plan is not a prerequisite to the confirmation of the Plan.

12. That based on the abovementioned evidence and testimony concerning the value of the Carlson Building Annex, the Court has appraised and does hereby appraise all claims allowed in Class 3 and Class 4 to be of no value, there being no equity in the Carlson Building Annex Bonds outstanding against the Carlson Building Annex, and accordingly no securities, cash or any other thing of value shall be distributed under the plan in respect of any of the claims allowed in Classes 3 and 4, and the acceptance of the Plan by the holders of such claims is not a prerequisite to the confirmation of the Plan. The Court further finds that the foregoing method of treatment of the holders of claims in Classes 3 and 4 provides adequate protection for the realization by the holders thereof of the value thereof under and consistent with the circumstances of the case, the same being of no value.

13. That the Plan has been accepted as required by the provisions of subdivision (e) of Section 77B of the Act to Establish a Uniform System of Bankruptcy throughout the United States as amended (hereinafter referred to as the "Bankruptcy Act"), and the above described acceptances have been filed in this proceeding.

14. That by reason of the number of securities of the Debtor outstanding and the extent of the public dealing therein the preparation of a verified statement showing what claims and shares of stock have been purchased or transferred by those accepting the Plan after the commencement or in contemplation of this proceeding, and the circumstances of such purchase or transfer, would be impractical, and, therefore,

the Court directs that such statement need not be filed in this proceeding.

15. That the Plan is fair, equitable, and feasible, and does not discriminate unfairly in favor of any class or classes of creditors or stockholders.

16. That the Plan complies with the provisions of subdivision (b) of Section 77B of the Bankruptcy Act.

17. That the offer of the Plan and its acceptance are in good faith, and were not made or procured by any means or promises forbidden by the Bankruptcy Act.

18. That all amounts to be paid by the Debtor and all amounts to be paid to committees or reorganization managers for services or expenses incident to the reorganization have been approved by or shall be subject to the approval of the judge of this court to whom this cause is assigned or of such other judge of this court as may be hearing this cause.

19. That the Debtor is not a utility subject to the jurisdiction of a regulatory commission or other regulatory authority created by the laws of the State of Illinois.

20. That all provisions of the Bankruptcy Act which ought to be complied with prior to the confirmation of the Plan have been fully complied with in the manner provided therein.

21. That all objections to the Plan, oral or written, are hereby overruled, and the Plan is hereby in all respects finally approved and confirmed.

22. That the provisions of the Plan and of this order shall be binding upon the Debtor, all of its stockholders, including those who have not as well as those who have accepted the Plan, and all creditors of the Debtor, secured or unsecured, whether or not affected by the Plan, and whether or not their claims have been filed, and if filed whether or not allowed, including creditors who have not as well as those who have accepted the Plan.

23. That Warner G. Baird, Trustee of the Debtor, and the above mentioned Committee, shall have full power and authority to, and shall, put into effect and carry out the Plan and orders of the Judge relative thereto, under and subject to the supervision and control of the Judge, and that the said Trustee and Committee shall report to this Court on April 30, 1936, as to the matters and things done and steps taken by them in connection with consummating the Plan as herein confirmed.

24. All petitions seeking the allowance of compensation for services rendered and reimbursement for actual and neces-

sary expenses incurred in connection with this proceeding and the Plan, by officers, parties in interest, depositaries, committees or other representatives of creditors and stockholders of the Debtor and the attorneys or agents of any of the foregoing and of the Debtor and for payment of administrative expenses and allowances in connection with the foreclosure proceedings in the Circuit Court of Cook County, Illinois, in cause No. B-223577, shall be filed with the Clerk of this Court on or before April 20, 1936.

25. This cause be, and hereby is, continued to April 30, 1936, at 10:00 A. M., for the consideration by the Court of said report of the Trustee and the Committee and of petitions for fees, expenses and allowances, and the determination thereof, and for the consideration and determination of all matters germane to this proceeding not hereby or heretofore determined in this matter and the entry of such further order or orders in connection therewith, and in the interim, the right is hereby granted to the Committee and any other persons in interest to apply to this Court for further direction and instructions in respect of any of the matters covered by this order and by the Plan, and the Court hereby reserves jurisdiction to hear and determine the subject matter of any such application and for the entry of such further order or orders and of a final decree in this proceeding.

To all of which the Debtor, 620 Church Street Building Corporation, and its stockholders, Irene Goodman, G. Walter, M. Long and A. W. Kibby, claimants under Class 5 (Claim No. 11), and Emil Rosenthal, claimant under Class 3 (Claim No. 9) and B. K. Goodman, claimant under Class 4 (Claim No. 11), object and except.

BARNES,
Judge.

Dated: March 31, 1936.

Endorsed: Filed Apr. 25, 1936, Frederick G. Campbell, Clerk.

And on the same day, to wit: On the twenty-fifth day of April, 1936, there was filed in the office of the Clerk of this Court an Assignment of Errors, which said Assignment of Errors is in the words and figures following, to wit:

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5869.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

Assignment of errors in support of petition for appeal from order of confirmation entered in proceedings for corporate reorganization under Section 77B of the Bankruptcy Act, as amended, in Case No. 56564, in the District Court of the United States, for the Northern District of Illinois, Eastern Division.

Honorable
John P. Barnes,
Judge Presiding.

JOINT ASSIGNMENT OF ERRORS FILED ON BEHALF OF 620 CHURCH STREET BUILDING CORPORATION, IRENE GOODMAN, G. WALTER, M. LONG, A. W. KIBBY, B. K. GOODMAN, AND EMIL ROSENTHAL, APPELLANTS.

Now come 620 Church Street Building Corporation, Irene Goodman, G. Walter, M. Long, A. W. Kibby, and B. K. Goodman, by Sabath, Perlman, Goodman & Rein, their attorneys, and Emil Rosenthal, by Irving L. Block, his attorney, (Petitioners) appellants, and file this, their Assignment of Errors, complaining as follows:

1. That the District Court erred in finding and decreeing that the acceptance of the plan described in said order of March 31, 1936, by the holders of allowed claims in Class 3 (being those claims allowed against the debtor or its property with respect to the second mortgage notes) was not a prerequisite for the confirmation of the said plan.

2. That the District Court erred in finding and decreeing that the acceptance of the plan described in said order of March 31, 1936, by the holders of allowed claims in Class 4 (being those claims allowed against the debtor or its property with respect to the third mortgage note) was not a prerequisite for the confirmation of the said plan.

3. That the District Court erred in finding and decreeing that the acceptance of the plan described in said order of March 31, 1936, by the stockholders of the debtor was not a prerequisite for the confirmation of the said plan.

4. That the District Court erred in finding and decreeing that the fair cash market value of debtor's property is the sum of $245,025.00, and further erred in finding and decreeing tha tthere is no equity over and above the principal amount of Carlson Annex bonds outstanding against the property of the debtor, and further erred in finding and decreeing that the debtor was insolvent, and further erred in finding and decreeing that the stockholders of said debtor are not entitled to participate in the said plan and that their acceptance of the plan is not a prerequisite to the confirmation of said plan.

5. That the District Court erred in finding and decreeing that no securities, cash or any other thing of value should be distributed under the plan in respect of any of the claims allowed in said Classes 3 and 4.

6. That the District Court erred in finding and decreeing that the method of treatment of the holders of claims in said Classes 3 and 4 provides adequate protection for the realization by the holders thereof of the value thereof under and consistent with the circumstances of the case.

7. That the District Court erred in appraising and finding that all claims allowed in said Class 3 and Class 4 are of no value.

8. That the District Court erred in finding and decreeing that the plan has been accepted as required by the provisions of Subdivision E of Section 77B of the Bankruptcy Act.

9. That the District Court erred in finding and decreeing that said plan is fair, equitable and feasible, and does not discriminate unfairly in favor of any class or classes of creditors or stockholders.

10. That the District Court erred in finding and decreeing that the said plan complies with the provisions of Subdivision B of Section 77B of the Bankruptcy Act.

11. That the District Court erred in finding and decreeing that all provisions of the Bankruptcy Act which ought to be complied with prior to the confirmation of the plan have been fully complied with in the manner provided therein.

12. That the District Court erred in finding and decreeing that all objections to the said plan, oral or written, be overruled, and that the said plan be in all respects finally approved and confirmed.

13. That the District Court erred in overruling the objections of 620 Church Street Building Corporation, Irene Goodman, G. Walter, M. Long, A. W. Kibby, Emil Rosenthal and B. K. Goodman.

14. That the District Court erred in not finding and decreeing that said plan does not provide adequate protection for the realization by the holders of claims allowed in said Classes 3 and 4 and by the stockholders of the debtor of the value of their respective claims in and to the assets of the debtor.

15. That the District Court erred in not finding and decreeing that said plan discriminates unfairly in favor of the first mortgage bondholders and against the stockholders of the debtor and against the holders of allowed claims in said Classes 3 and 4.

16. That the District Court erred in not finding and decreeing that said plan of reorganization is unfair, inequitable and contrary to the Constitution of the United States of America, in that said plan and the order of confirmation thereof are repugnant to the Fifth Amendment of said Constitution.

17. That the District Court erred in finding and decreeing that the provisions of said plan and said order of confirmation shall be binding upon the debtor, or its stockholders, including those who have not, as well as those who have, accepted the said plan, and all creditors of the debtor, secured or unsecured, whether or not affected by said plan, and whether their claims have been filed, and if filed or not, allowed, including creditors who have not, as well as those who have, accepted the plan.

Respectfully submitted,
620 CHURCH STREET BUILDING CORPORATION,
IRENE GOODMAN, G. WALTER, M. LONG,
A. W. KIBBY, and B. K. GOODMAN,
By ISAAC M. MILLS,
THEODORE E. REIN,
MORTON C. CHESLER,
Their Attorneys.

EMIL ROSENTHAL,
By IRVING L. BLOCK,
His Attorney.

Endorsed: Filed Apr. 25, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit: On the eleventh day of May, 1936, there was filed in the office of the Clerk of this Court a Memorandum of the Court on Petition for Leave to Appeal, which said Memorandum of the Court is in the words and figures following, to wit: Filed May 1936.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

No. 5869.

In the Matter of
620 Church Street Building Corporation, a Corporation,
Debtor.

MEMORANDUM ON PETITION FOR APPEAL.

Petitioners are a debtor, the owners of all of its capital stock, and the holders of all the notes secured by a second and third mortgage on the debtor's premises. They seek to appeal from an order of confirmation of a plan to which they filed objections in the proceedings under section 77B. The plan was confirmed over their objections on the ground that the value of the property was less than the amount of the first mortgage, hence they were not adversely affected by it. Appraisals were submitted to the court which varied from $205,000 to $600,000, and the court found the fair market value of the premises to be $245,125, and that there was no equity in the estate over and above the $445,500 of principal amount due on the first mortgage bonds, and that the debtor was insolvent, and the consent of the majority of the stockholders was not prerequisite to the confirmation of the plan.

The court did not err in ruling that if the property were not worth the amount of the first mortgage indebtedness, the junior interests had no equity to be protected. In view of the fact that, upon what must have been a full hearing as to value of the premises, the court made a specific finding as to that value, this court would have no right to disturb that finding. If there is no equity left, these interests have no right to challenge the plan approved by those parties who are materially interested. Section 77B, subsection (e) provides

that acceptance is not requisite to the confirmation of the plan by any stockholder or class of stockholders if the judge shall have determined that the debtor is insolvent, as he did in this case.

Appeal

DENIED.

Endorsed: Filed May 11, 1936. Frederick G. Campbell, Clerk.

And on the same day, to wit: On the eleventh day of May, 1936, the following further proceedings were had and entered of record, to wit:

Monday, May 11, 1936.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.
Hon. William M. Sparks, Circuit Judge.
Hon. Samuel Alschuler, Circuit Judge.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

620 Church Street Building Corporation, Irene Goodman, G. Walter, M. Long, A. W. Kibby, Emil Rosenthal, and B. K. Goodman.

Petition for leave to appeal from an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is now here ordered, adjudged and decreed by this Court that the petition of 620 Church Street Building Corporation, Irene Goodman, G. Walter, M. Long, A. W. Kibby, Emil Rosenthal and B. K. Goodman for leave to appeal from the Order or Decree of the District Court of the United States for the Northern District of Illinois, Eastern Division, entered therein on March 31, 1936 In The Matter Of 620 Church Street Building Corporation, a corporation, Debtor, be, and the same is hereby denied.

And afterwards, to wit: On the ninth day of June, 1936, there was filed in the office of the Clerk of this Court a Motion to Vacate Order Denying Leave to Appeal, which said Motion is in the words and figures following, to wit:

No. 5869.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

MOTION OF PETITIONERS TO VACATE ORDER DENYING LEAVE TO APPEAL, AND FOR RECONSIDERATION OF SAID APPLICATION.

Now come 620 Church Street Building Corporation, a corporation, Irene Goodman, G. Walter, M. Long, A. W. Kibby and B. K. Goodman, petitioners, by Isaac M. Mills, Theodore E. Rein and Morton C. Chesler, their attorneys, and Emil Rosenthal, petitioner, by Irving L. Block, his attorney, and respectfully move this Honorable Court to vacate the order entered herein denying these petitioners leave to appeal from that certain order of confirmation of a plan of reorganization under Section 77B of the National Bankruptcy Act, entered by the District Court below on March 31, 1936, and respectfully move the court to reconsider said application. In support of the foregoing motion, petitioners present herewith their suggestions.

620 CHURCH STREET BUILDING CORPORATION, IRENE GOODMAN, G. WALTER, M. LONG, A. W. KIBBY and B. K. GOODMAN,
By ISAAC M. MILLS,
THEODORE E. REIN,
MORTON C. CHESLER,
Their attorneys.

EMIL ROSENTHAL,
By IRVING L. BLOCK,
His attorney.

Endorsed: Filed June 9, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit: On the twenty-sixth day of June, 1936, the following further proceedings were had and entered of record, to wit:

Friday, June 26, 1936.

Court met pursuant to adjournment.

Before:

Hon. Evan A. Evans, Circuit Judge.

Hon. William M. Sparks, Circuit Judge.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

620 Church Street Building Corporation, *et al.*,
Petitioners.

Petition for leave to appeal from an Order of the District Court of the United States for the Northern District of Illinois, Eastern Division.

It is now here ordered by the Court that the motion to vacate the order of this Court denying petition for leave to appeal heretofore entered on May 11, 1936, and for reconsideration of the petition for leave to appeal be, and the same is hereby overruled.

And afterwards, to wit: On the seventeenth day of July, 1936, there was filed in the office of the Clerk of this Court a Notice and Motion for Leave to File a Record, which said Notice and Motion are in the words and figures following, to wit:

No. 5869.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS

For the Seventh Circuit.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

NOTICE.

To: Defrees, Buckingham, Jones & Hoffman, 38 S. Dearborn St.

George W. Swain, 134 S. LaSalle St.

Gotthard A. Dahlberg, 11 S. LaSalle St.

Pam & Hurd, 231 S. LaSalle St.

Wilhartz, Hirsch & Schanfarber, 38 S. Dearborn St.

Sonnenschein, Berkson, Lautmann, Levinson & Morse, 77 W. Washington St., Chicago, Illinois.

You Are Hereby Notified that on Friday, the 17th day of July, 1936, we shall file with the Clerk of the United States Circuit Court of Appeals for the Seventh Circuit the motion of 620 Church Street Building Corportion, Irene K. Goodman, G. Walter, M. Long, A. W. Kibby, B. K. Goodman and Emil Rosenthal for leave to file a praecipe record in accordance with the Notice and Praecipe heretofore served upon you, a copy of which motion is herewith served upon you. We shall request the Clerk to present said Motion to the Court or any member thereof who may be sitting in the courtroom usually occupied by the Judges of the United States Circuit Court of Appeals for the Seventh Circuit or in cham-

bers on Saturday, July 18th, A. D. 1936. At which time and place you may appear if you so desire.

ISAAC M. MILLS,
THEODORE E. REIN,
MORTON C. CHESLER,
IRVING L. BLOCK,
Chicago, Illinois,
Counsel for Petitioners.

Received a copy of the above and foregoing notice and copy of the Motion therein mentioned this 17th day of July, A. D. 1936.

SONNENSCHEIN, BERKSON, LAUTMANN, LEVINSON & MORSE,
GOTTHARD A. DAHLBERG,
WILHARTZ, HIRSCH & SCHANFARBER,
DEFREES, BUCKINGHAM, JONES & HOFFMAN,
SCOTT MACLEISH & FALK,
PAM & HURD

Endorsed: Filed July 17, 1936. Frederick G. Campbell, Clerk.

No. 5869.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

In the Matter of
620 Church Street Building Corporation, a corporation,
Debtor.

MOTION.

Now come petitioners 620 Church Street Building Corporation, Irene K. Goodman, G. Walter, M. Long, A. W. Kibby, and B. K. Goodman by Isaac M. Mills, Theodore E. Rein and Morton C. Chesler, their attorneys and petitioner Emil Rosenthal by Irving L. Block, his attorney, and respectfully

move this Honorable Court for leave to file a praecipe record of the proceedings had in the District Court below, and concerning the order of confirmation leave to appeal from which has been denied by this court; all without prejudice to the several orders and pleadings heretofore filed herein.

620 CHURCH STREET BUILDING CORPORATION, IRENE K. GOODMAN, G. WALTER, M. LONG, A. W. KIBBY and B. K. GOODMAN,

By: ISAAC M. MILLS,
THEODORE E. REIN,
MORTON C. CHESLER,
Their Attorneys,

EMIL ROSENTHAL,

By: IRVING L. BLOCK,
His Attorney.

Endorsed: Filed July 17, 1936. Frederick G. Campbell, Clerk.

And afterwards, to wit: On the twenty-seventh day of July, 1936, there was filed in the office of the Clerk of this Court a Praecipe for Record, which said Praecipe for Record is in the words and figures following, to wit:—

No. 5869.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

In the matter of
620 Church Street Building Corporation, a corporation,
Debtor.

PRAECIPE FOR RECORD.

To Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

You will please prepare an authenticated transcript of the record of the proceedings had in the above entitled matter for

transmission to the Supreme Court of the United States in support of a petition for certiorari to be filed by the petitioners herein, and you will please include in such record the following:

1. Notice and Proof of Service of Petition for leave to appeal, filed April 25th, 1936.
2. Petition of 620 Church Street Building Corporation, *et al.* for leave to appeal, filed April 25th, 1936.
3. Joint Assignment of Errors filed by 620 Church Street Building Corporation, *et al.* on April 25th, 1936.
4. Order denying leave to appeal entered May 11, 1936.
5. Memorandum of Court filed May 11, 1936.
6. Notice and Proof of Service filed June 9th, 1936.
7. Motion to vacate order denying leave to appeal, filed June 9, 1936.
8. Order denying motion to vacate entered June 26, 1936.
9. Notice and Motion filed July 17, 1936.
10. This Praecipe for Record.

Respectfully,

I. M. MILLS,
THEODORE E. REIN,
MORTON C. CHESLER,
IRVING L. BLOCK,
Counsel for Petitioners.

July 27, 1936.

We hereby acknowledge receipt of a copy of the foregoing Praecipe for Record.

DON KENNETH JONES,
Counsel for Protective Committee, Respondents.

Endorsed: Filed July 27, 1936. Frederick G. Campbell, Clerk.

UNITED STATES CIRCUIT COURT OF APPEALS.

For the Seventh Circuit.

I, Frederick G. Campbell, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing printed pages, numbered from 1 to 28, inclusive, contain a true copy of the proceedings had and papers filed, made in accordance with the Praecipe for Record filed on July 27, 1936,

In The Matter of 620 Church Street Building Corporation, a corporation,

Debtor,

620 Church Street Building Corporation, *et al.*,

Petitioners.

No. 5869, October Term, 1935, as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this 29th day of July, A. D. 1936.

FREDERICK G. CAMPBELL,
Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

(Seal)

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 12, 1936

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is advanced and assigned for hearing immediately following No. 48.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.